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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,666	11/01/2000	Klaus Brandstetter	BRANDSTATTER 4	8731

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EXAMINER
EL HADY, NABIL M

ART UNIT	PAPER NUMBER
2154	2

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/702,666	BRANDSTETTER, KLAUS
	Examiner	Art Unit
	Nabil M El-Hady	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>01 November 2000</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-8</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-8</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

1.   Claims 1-8 are pending in this application.

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3.   Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

   A. The following terms lack antecedent basis:

      a) "the data value", claim 3, line 1.

   B. The following is not clearly understood:

      a) "since a last call", claim 2, line 4. It is not clear whether a last call is the last call by the user computer to call up the CPU load.

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   Claims 1-3, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshinkawa et al. (Using Smart Clients to Build Scalable Services, Abstracts- 1997 Annual Technical Conference), hereafter "Yoshinkawa".

6.   As to claim 1, Yoshinkawa discloses the invention as claimed including a data

processing program based operating method for computer networks to control load-balanced

access by a user computer to a server computer in a computer network with multiple user and

server computers having the following method steps:

- all server computers continually determine the load of their central processing unit --

CPU load - and store at least one load-specific data value in a configuration that can be called

up over the computer network (after a number of updates have been collected, last paragraph

in section 3.1.2, Updating Applet State),

- all server computers wait for datagrams stemming from user computers in the

computer network, which incorporate a header to call up load-specific data values (piggy-

backing update information with server replies to client requests, last paragraph in section3.1.2,

Updating Applet State),

- a user computer seeking access to the server computer with a lowest CPU load sends

a datagram over the computer network to the server computers, with a header to call up the

CPU load (inherent in piggy-backing update information with server replies to client requests,

last paragraph in section 3.1.2, Updating Applet State; and Fig. 2),

- the server computers each send back a reply datagram over the computer network to

the user computer with the load-specific data value (inherent in section in 3.1.2, Updating Applet

State; and Fig. 2),

- the user computer analyzes the reply datagrams to determine which server computer has

the lowest CPU load, and access is initiated to the server computer with the lowest CPU load

(inherent in last paragraph of section 3, Smart Client Architecture; 3rd paragraph in section 5

Summary; and Fig. 3).

7.   As to claim 2, Yoshinkawa discloses the load-specific data value for the CPU load of a

central processing unit of the respective server computer is determined based on an amount of

time that has elapsed since a last call on the central processing unit (inherent in last paragraph

in section 3.1.2, Updating Applet State).

8.   As to claim 3, Yoshinkawa discloses the data value is determined from a defined number

of entries of elapsed amounts of time into a table (inherent in last paragraph in section 3.1.2,

Updating Applet State).

9.   As to claim 8, Yoshinkawa discloses the server computers transmit datagrams with

information regarding connection ports that are available under defined data exchange protocols

(inherent in 3rd paragraph in section 5, Summary),

10.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

11.   Claims 1 and 4-6 are further rejected under 35 U.S.C. 102(e) as being anticipated by

Florman (US 6,377,975).

12.   As to claim 1, Florman discloses the invention as claimed (inherent in abstract, col. 1,

lines 37-44; col. 3, line 62 to col. 4, line 8; claim 1; and Fig. 1) including a data processing

program based operating method for computer networks to control load-balanced access by a

user computer to a server computer in a computer network with multiple user and server

computers having the following method steps:

        - all server computers continually determine the load of their central processing unit --

CPU load - and store at least one load-specific data value in a configuration that can be called

up over the computer network,

        - all server computers wait for datagrams stemming from user computers in the

computer network, which incorporate a header to call up load-specific data values,

        - a user computer seeking access to the server computer with a lowest CPU load sends

a datagram over the computer network to the server computers, with a header to call up the

CPU load,

        - the server computers each send back a reply datagram over the computer network to

the user computer with the load-specific data value,

    - the user computer analyzes the reply datagrams to determine which server computer has

the lowest CPU load, and access is initiated to the server computer with the lowest CPU load .

13.   As to claim 4, Florman discloses the user computer seeking access sends a circular

datagram to all server computers in the computer network (inherent in col. 3, line 62 to col. 4,

line 4).

14.   As to claim 5, Florman discloses the user computer seeking access sends individual

datagrams to pre-defined server computers (abstract, lines 7-13).

15.   As to claim 6, Florman discloses the user computer seeking access sends a user

identification parameter that is representative for this computer, specifically a user identification

number (userID) and an associated domain name, to the server computer (inherent in col. 4,

lines 1-4).

16.   Claim 1 is further rejected under 35 U.S.C. 102(e) as being anticipated by Ballard (US

6,078,960).

17.   As to claim 1, Bollard discloses the invention as claimed (inherent in abstract; col. 1,

lines 44-67; col. 6, lines 3-6, 32-35, 45-66; and col. 7, lines 54-64) including a data processing

program based operating method for computer networks to control load-balanced access by a

user computer to a server computer in a computer network with multiple user and server

computers having the following method steps:

       - all server computers continually determine the load of their central processing unit --

CPU load - and store at least one load-specific data value in a configuration that can be called

up over the computer network,

       - all server computers wait for datagrams stemming from user computers in the

computer network, which incorporate a header to call up load-specific data values,

       - a user computer seeking access to the server computer with a lowest CPU load sends

a datagram over the computer network to the server computers, with a header to call up the

CPU load,

       - the server computers each send back a reply datagram over the computer network to

the user computer with the load-specific data value,

- the user computer analyzes the reply datagrams to determine which server computer has

the lowest CPU load, and access is initiated to the server computer with the lowest CPU load .

18.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

19.   Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Florman (US

6,377,975) in view of Lin et al. (US 6,381,748), hereafter "Lin".

As to claim 7, Florman does not necessarily disclose the server computers transmit datagrams

with additional information on the active or interrupted program sessions for the user computer

seeking access. However, it is well known in the art that session manager in servers keep a list

of session status for each client (see, for example, Lin, Fig. 4, and col. 5, lines 17-27). It would

have been obvious to one skilled in the art at the time of the invention to include information in

such a status list in the datagrams transmitted to the user computer in Florman's, such

information would provide enhanced analysis by the user computer to determine which server

computer to be accessed by the user.

20.   The prior art made of record and not relied upon is considered pertinent to applicant's
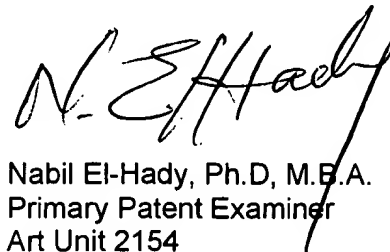
disclosure. .

Jindal et al. (US 6,327,622) ; Primak et al. (US 6,389,448) ; Jordan et al. (US 6,438,652);

Zaumen et al. (US 6,648,479) ; Al-Ghosein et al. (US 6,473,791) ; O'Neil et al. (US

6,128,279) ; and Zisapel et al. (US 6,665,702).

21.   Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Nabil M El-Hady whose telephone number is (703) 308-7990. The

examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Follansbee can be reached on (703) 305-8498. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 28, 2004   Nabil El-Hady, Ph.D, M.B.A.
                                                           Primary Patent Examiner
                                                           Art Unit 2154